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 Trustee of the Highland Litigation Sub-Trust*

**UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF TEXAS
 DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹
 Reorganized Debtor.

MARC S. KIRSCHNER, AS LITIGATION
 TRUSTEE OF THE LITIGATION SUB-TRUST,

Plaintiff,

v.

JAMES D. DONDERO; MARK A. OKADA;
 SCOTT ELLINGTON; ISAAC LEVENTON;
 GRANT JAMES SCOTT III; STRAND
 ADVISORS, INC.; NEXPOINT ADVISORS,
 L.P.; HIGHLAND CAPITAL MANAGEMENT
 FUND ADVISORS, L.P.; DUGABOY
 INVESTMENT TRUST AND NANCY
 DONDERO, AS TRUSTEE OF DUGABOY
 INVESTMENT TRUST; GET GOOD TRUST
 AND GRANT JAMES SCOTT III, AS
 TRUSTEE OF GET GOOD TRUST; HUNTER
 MOUNTAIN INVESTMENT TRUST; MARK &
 PAMELA OKADA FAMILY TRUST –
 EXEMPT TRUST #1 AND LAWRENCE
 TONOMURA AS TRUSTEE OF MARK &

Chapter 11

Case No. 19-34054-sgj11

Adv. Pro. No. 21-03076-sgj

¹ The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

PAMELA OKADA FAMILY TRUST –
EXEMPT TRUST #1; MARK & PAMELA
OKADA FAMILY TRUST – EXEMPT TRUST
#2 AND LAWRENCE TONOMURA IN HIS
CAPACITY AS TRUSTEE OF MARK &
PAMELA OKADA FAMILY TRUST –
EXEMPT TRUST #2; CLO HOLDCO, LTD.;
CHARITABLE DAF HOLDCO, LTD.;
CHARITABLE DAF FUND, LP.; HIGHLAND
DALLAS FOUNDATION; RAND PE FUND I,
LP, SERIES 1; MASSAND CAPITAL, LLC;
MASSAND CAPITAL, INC.; AND SAS ASSET
RECOVERY, LTD.,

Defendants.

**THE LITIGATION TRUSTEE’S UNOPPOSED MOTION FOR LEAVE TO FILE A
BRIEF IN EXCESS OF TWENTY-FIVE PAGES**

Marc S. Kirschner (the “Litigation Trustee”), by and through his undersigned counsel, respectfully requests that the Court grant his *Unopposed Motion for Leave to File a Brief in Excess of Twenty-Five Pages* (the “Motion”) and allow the Litigation Trustee to file an Opposition Brief (as defined herein) not to exceed 135 pages. In support of this Motion, the Litigation Trustee states as follows:

I. Relevant Factual Background

1. On October 15, 2021, the Litigation Trustee commenced the above-captioned adversary proceeding against Defendants [Docket No. 1] (the “Complaint”).
2. On May 19, 2022, the Litigation Trustee filed an amended complaint [Docket No. 158] (the “Amended Complaint”).
3. On July 11, 2022, a Motion to Dismiss the Amended Complaint was filed by defendant Isaac Leventon [Docket Nos. 172 and 173] (“Leventon” and the “Leventon Motion”).
4. On July 11, 2022, a Motion to Dismiss the Amended Complaint was filed by defendant Scott Ellington [Docket Nos. 175 and 176] (“Ellington” and the “Ellington Motion”).

5. On July 11, 2022, a Motion to Dismiss the Amended Complaint and a Motion for a More Definite Statement was filed by defendants CLO Holdco, Ltd., Charitable DAF Holdco, Ltd., Charitable DAF Fund, LP, and Highland Dallas Foundation, Inc. [Docket Nos. 178, 179, and 191] (the “CLO Holdco Defendants” and the “CLO Holdco Defendants Motions”).

6. On July 11, 2022, a Motion to Dismiss the Amended Complaint was filed by defendants Highland Capital Management Fund Advisors, L.P., and NexPoint Advisors, L.P. [Docket Nos. 182 and 183] (the “Advisor Defendants” and the “Advisor Defendants Motion”).

7. On July 11, 2022, a Motion to Dismiss the Amended Complaint was filed by defendants Mark Okada, Mark & Pamela Okada Family Trust Exempt Trust # 1 and Lawrence Tonomura in his capacity as Trustee, and Mark & Pamela Okada Family Trust Exempt Trust # 2 and Lawrence Tonomura in his capacity as Trustee [Docket Nos. 185 and 186] (the “Okada Defendants” and the “Okada Defendants Motion”).

8. On July 12, 2022, a Motion to Dismiss the Amended Complaint was filed by defendants James D. Dondero, Dugaboy Investment Trust and Nancy Dondero in her capacity as Trustee, Get Good Trust and Grant Scott in his capacity as Trustee, Hunter Mountain Investment Trust, Rand PE Fund I, L.P., Series 1, and Strand Advisors, Inc. [Docket Nos. 189 and 190] (the “Dondero Defendants” and the “Dondero Defendants Motion,” and, collectively with the Leventon Motion, Ellington Motion, CLO Holdco Defendants Motions, Advisor Defendants Motion, and Okada Defendants Motion, the “Motions”).

9. The Litigation Trustee and Defendants negotiated a briefing schedule for the Motions, which was approved by the Court. See *Stipulation and Proposed Second Amended Scheduling Order*, entered by the Court on June 29, 2022 [Docket No. 167]. The Litigation Trustee’s response to the Motions (the “Opposition Brief”) is due on September 19, 2022.

II. Basis for Relief

1. Compelling reasons exist for this Motion. The Complaint asserts 36 causes of action against 21 defendants. 17 of those defendants have filed six separate Motions to Dismiss plus one Motion for a More Definite Statement, totaling over 140 pages of briefing.² While the Motions contain certain unique arguments, there are also overlapping arguments and citations to other Defendants' briefs.

2. For the Court's and the parties' convenience, the Litigation Trustee intends to file one, consolidated Opposition Brief to the Motions, setting forth the Litigation Trustee's opposition to both Defendants' unique and overlapping arguments for dismissal and the CLO Holdco Defendants Motion for a More Definite Statement, instead of filing six separate (and overlapping) opposition briefs. While the Litigation Trustee has attempted to keep its Opposition Brief as succinct as possible, he submits that his consolidated Opposition Brief will need to exceed 25 pages in order to adequately address the Defendants' arguments.

3. Counsel for the Litigation Trustee conferred with counsel for the Defendants whom filed the Motions, and such Defendants consent to the relief requested herein.

4. For these reasons, the Litigation Trustee respectfully requests the Court's leave to file a single Opposition Brief not to exceed 135 pages in length.

REQUEST FOR RELIEF

For the foregoing reasons, the Litigation Trustee respectfully asks the Court to grant the present Motion and allow the Litigation Trustee to file an Opposition Brief not to exceed 135

² Of the remaining Defendants, two are subject to a Default Order [Docket No. 197] but have nevertheless subsequently filed an untimely answer to the Amended Complaint [Docket No. 200]. Defendant SAS Asset Recovery Ltd. was only recently served via the Hague Convention [Docket No. 204]. Last, Defendant Grant Scott filed an answer rather than moving against the Amended Complaint [Docket No. 181].

pages, and grant the Litigation Trustee such other and further relief as to which he may be justly entitled.

Dated: September 13, 2022

Respectfully submitted,

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/s/ Paige Holden Montgomery

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-and-

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*Counsel for Marc S. Kirschner, as Litigation
Trustee of the Highland Litigation Sub-Trust*

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies, that on September 7, 2022, and September 8, 2022, the undersigned counsel for the Litigation Trustee conferred via email with the counsel for the Defendants whom filed the Motions. All such Defendants consent to the relief requested herein.³

/s/ Calli Ray

Calli Ray

³ Brian Glueckstein indicated consent on behalf of all Defendants whom filed Motions. Included on the conferral communications were Amy L. Ruhland on behalf of the Dondero Defendants, Deborah Dandeneau on behalf of Leventon and Ellington, Louis M. Phillips on behalf of the CLO Holdco Defendants, Deborah Deitsch-Perez on behalf of the Advisor Defendants, and Brian Glueckstein on behalf of the Okada Defendants; none voiced objection to either the Litigation Trustee's request or Mr. Glueckstein's consent on their collective behalf.

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,⁴

Reorganized Debtor.

MARC S. KIRSCHNER, AS LITIGATION
TRUSTEE OF THE LITIGATION SUB-TRUST,

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SCOTT ELLINGTON; ISAAC LEVENTON;
GRANT JAMES SCOTT III; STRAND
ADVISORS, INC.; NEXPOINT ADVISORS,
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INVESTMENT TRUST; GET GOOD TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST; HUNTER MOUNTAIN INVESTMENT TRUST; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1 AND LAWRENCE TONOMURA AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2 AND LAWRENCE TONOMURA IN HIS CAPACITY AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2; CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP, SERIES 1; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; AND SAS ASSET RECOVERY, LTD.,

Defendants.

**ORDER GRANTING THE LITIGATION TRUSTEE’S UNOPPOSED MOTION FOR
LEAVE TO FILE A BRIEF IN EXCESS OF TWENTY-FIVE PAGES**

Upon consideration of the *Litigation Trustee’s Unopposed Motion for Leave to File a Brief in Excess of Twenty-Five Pages* (the “Motion”), **IT IS HEREBY ORDERED** that:

1. The Motion is **GRANTED**.
2. The Litigation Trustee⁵ may file an Opposition Brief to the Motions in excess of 25 pages. The Litigation Trustee’s Opposition Brief shall not exceed 135 pages.
3. The Court shall retain jurisdiction over all matters arising from or relating to the interpretation or implementation of this Order.

END OF ORDER

⁵ Capitalized terms used but not defined herein shall have the respective meanings given to them in the Motion.